

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

MINNIE RIVERS,

Plaintiff,

Civil Action No.: 16-CV-01847-JNE-FLN

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Minnie Rivers, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 637], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In June of 2015, Ms. Minnie Rivers contacted undersigned counsel regarding an infection and subsequent treatment that she experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicate that a Bair Hugger device was used during the original surgery.
3. On June 3, 2016, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. On November 15, 2016, Mr. Michael Weaver, the son of Ms. Rivers, called Counsel in response to the mailed Plaintiff Fact Sheet and indicated that his mother had passed away recently. He expressed an interest in continuing the case and stated that he would send in the necessary paperwork to move forward.
5. Over the next few months, Counsel attempted, with some cooperation of Mr. Weaver, to complete the Plaintiff Fact Sheet. While Counsel has diligently worked on this issue, the Plaintiff Fact Sheet is still incomplete as of today.
6. Following the last phone conversation with Mr. Weaver on May 26, 2017, phone calls by Kennedy Hodges staff on the following dates went unanswered, and were not returned:

- June 9, 2017
- June 16, 2017
- June 23, 2017
- July 7, 2017
- July 14, 2017
- July 21, 2017
- August 4, 2017

7. Additionally, letters were sent to Mr. Weaver on the following dates:

- June 23, 2017
- August 4, 2017

8. As a result, Counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel requests that the current action not be dismissed with prejudice and that Mr. Weaver be given a reasonable amount of time to contact counsel to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and to obtain the necessary probate paperwork to continue the case.

Dated: August 10, 2017

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
David W. Hodges
dhodges@kennedyhodges.com
Gabriel A. Assaad
gassaad@kennedyhodges.com
4409 Montrose Blvd. Ste 200
Houston, TX 77006
Telephone: (713) 523-0001
Facsimile: (713) 523-1116

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on August 10, 2017 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges
David W. Hodges